



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/735,975

12/15/2003

Nils Zander

TRAUMA 3.0-449

4263

530 7590 04/30/2008

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK  
600 SOUTH AVENUE WEST  
WESTFIELD, NJ 07090

EXAMINER

RAMANA, ANURADHA

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

04/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/735,975	<b>Applicant(s)</b> ZANDER ET AL.	
	<b>Examiner</b> Anu Ramana	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,11,13-22 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,22 and 25 is/are allowed.
- 6) ☒ Claim(s) 1,3,11,13-21,26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/15/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The finality of the rejection of the last Office action being withdrawn due to the new rejections made in this action. The Examiner sincerely apologizes for any inconvenience caused to the Applicants by this action.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11, 13-15, 17-21, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, line 11: "the shank" lacks antecedent basis since the shank has not been positively recited in the claim.

In claim 13, line 3: it is unclear what structure is being claimed by "overlap one another."

In claim 17, line 4: "said nail shank" lacks antecedent basis. Claim 16 recites an "implant shank" which is not positively recited.

In claim 17, line 3: "the second screw portion" lacks antecedent basis. Does applicant mean "second portion" of the first screw or a portion of a second screw?

In claim 26, line 10: "said nail shank" lacks antecedent basis. In claim 26, line 12, does "said first portion" refer to "said first screw portion"?

In claim 27, line 10: "said nail shank" lacks antecedent basis.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3733

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 11, 13 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Sutter et al. (US 4,388,921).

Sutter et al. disclose an implant having a long narrow part or shank 7c; a bone screw 9 with a head 9b; and a biasing element or washer 11 having a series of axially spaced circumferentially extending slots 11e that are circumferentially offset from one another and overlap one another in a plane containing the longitudinal axis of the screw wherein the biasing element is received in a bore of the implant and the screw head engages a first end of the biasing element (Fig. 2, col. 4, lines 18-68 and col. 5, lines 1-24).

Claims 1, 3, 11, 13, 16 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Hall, IV et al. (US 6,645,209) or "Hall" herein.

Hall discloses an osteosynthetic aid including: a locking nail 14 with a longitudinally extending shank 12; at least one cross-bore 15 extending transverse to a longitudinal axis of the shank; a biasing sleeve 26 received in the shank and having a radial flange 28 against which a locking screw 34 comes to bear (Figs. 1 and 2, col. 5, lines 36-67 and col. 6, lines 1-32).

Regarding claim 3, Hall discloses a first screw portion or locking screw 34 to engage a thread of a cross bore namely, the bore of the lag screw or second screw portion 18.

Regarding claim 16, Hall discloses a screw second portion 18 having a head 20 releasably coupled to the first screw portion 34

Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Bramlet et al. (US 6,443,954).

Bramlet et al. disclose a locking nail 2 including: at least one cross bore extending along an axis transverse to a longitudinal axis of the shank; a headed locking screw 5; and a biasing sleeve 4 with a radial flange or edge or rim against which the head 5 of locking screw 5 comes to bear (Figs. 1-3, col. 5, lines 28-67, cols. 6-7 and col. 8, lines 1-64).

Regarding claim 3, Bramlet et al. disclose locking screw 5 to engage with "a thread of a cross bore," namely, the internal threaded portion of lag screw 1.

### ***Response to Arguments***

Applicant's arguments submitted under "REMARKS" in the response filed on February 29, 2008 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to the rejections of claims 1 and 3 over Bramlet et al. are not persuasive because head 5 of the screw contacts the sleeve. It is the Examiner's position that when screw 5 is placed inside the sleeve it forces the sleeve against the edges of radial bore 11. It is further noted that Applicants' are not claiming that the sleeve is held axially in position by engagement with the nail shank.

### ***Allowable Subject Matter***

Claims 4, 22 and 25 are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3733

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached on Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR  
April 27, 2008

/Anu Ramana/  
Primary Examiner, Art Unit 3733